UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA,

Plaintiff, Docket No.: 15 CR 18(FB)

versus

CHEVELLE NESBETH, U.S. Courthouse, 225 Cadman Plaza East, Brooklyn, NY 11201

Defendant.
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June 15, 2015
2:30 p.m.

Transcript of Criminal Cause for Trial

Before: HONORABLE FREDERIC BLOCK,
District Court Senior Judge
(and a jury.)

APPEARANCES

For the Government: KELLY T. CURRIE, ESQ.
Acting United States Attorney
Eastern District of New York
271 Cadman Plaza East
Brooklyn, New York 11201
BY: PAUL G. SCOTTI, ESQ.,
ELIZABETH GEDDES, ESQ.
Assistant U.S. Attorneys

For the Defendant: FEDERAL DEFENDERS OF NEW YORK, INC.
1 Pierrepont Plaza
Brooklyn, New York 11201
BY: AMANDA L. DAVID, ESQ.
MICHAEL WEIL, ESQ.

Also Present: SHANNON McFADDEN
MELANIE MORALES
RANIT PATEL
MAGDALENA ST. SURIN

Official Court Reporter: MICHELE NARDONE, CSR, RPR, CRR
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Proceedings recorded by mechanical stenography. Transcript produced by computer-aided transcription.

(In open court.)

(Defendant present.)

THE COURT: Good afternoon, everybody. Please be seated.

Mr. Innelli is obviously with the jurors now. Just bring me up to speed. You selected your jury apparently.

Is that correct?

MR. SCOTTI: That's correct, your Honor.

THE COURT: So my thinking is to have the openings tomorrow morning. I don't want to do them late in afternoon, unless you want to do it today.

MR. SCOTTI: That's fine, your Honor.

THE COURT: Mr. Scotti?

MR. SCOTTI: Yes, your Honor.

THE COURT: That's okay with you?

MR. SCOTTI: That's fine with the government, judge.

THE COURT: Tomorrow morning, and I will talk to the jurors for a few minutes today, give them some preliminary comments to just put them at ease, and send them on their way. They will have to be back tomorrow at ten o'clock.

Rumor had it that there was a Batson issue here that surfaced during the course of jury selection, but it was resolved.

MR. SCOTTI: That's correct, your Honor. It was resolved between the parties.

THE COURT: Anything we need to bring to my attention because we want to make sure we flush it out now. If there is any problem whatsoever, we have to take care of it now.

MR. SCOTTI: No, your Honor. I believe it was completely resolved.

MS. DAVID: Yes, your Honor.

THE COURT: I don't have to be concerned about it?

MS. DAVID: Nothing to be concerned about.

MR. SCOTTI: Nothing to be concerned about, judge.

THE COURT: So the jury is satisfactory to everybody?

MS. DAVID: Yes, your Honor.

MR. SCOTTI: Yes, your Honor.

THE COURT: You had a very fine magistrate judge select the jury, Judge Gold. I'm sure he did a good job.

MR. SCOTTI: He did, your Honor.

THE COURT: Who are these folks in the audience? Are they here on this case or a different case?

MR. SCOTTI: This is on this case, judge. It's most of the general crimes class with some interns sprinkled in.

THE COURT: This is a rooting section of yours?

MR. SCOTTI: I don't know rooting, your Honor. I guess it depends on how things went.

THE COURT: Would they be allowed to boo if they didn't like the way you gave your opening statement?

MR. SCOTTI: Probably.

THE COURT: In Italy they do that. Pavarotti once performed in La Scala and they booed him and they said do better, it's an insult to us that you didn't give us your best performance.

You don't do that in the U.S. Attorney's office, do you?

MR. SCOTTI: No, your Honor.

THE COURT: I'm glad to hear that. We made a record of this because there would probably not be any other federal court judge that would ask you that question. So you would want to preserve that for posterity.

MR. SCOTTI: I will, and I will get a copy.

THE COURT: So who is going to be holding the main oar for the defense, Amanda David?

MS. DAVID: Yes, your Honor.

THE COURT: You told my this is your second trial.

MS. DAVID: Second federal trial.

THE COURT: Your second federal trial. You have had 20 or 30 state trials, and this is your second federal trial.

MS. DAVID: Yes, your Honor.

THE COURT: Mr. Scotti, this is your first trial?

MR. SCOTTI: My first federal trial, your Honor.

THE COURT: You have had some other trials in your illustrious career before here?

MR. SCOTTI: I'm not sure illustrious, but in Queens

County, yes, your Honor.

THE COURT: You worked with the D.A.'s office? I know you worked with D.A. Brown.

MS. DAVID: That's correct, judge. Send him my best and glad to see he is alive and kicking.

You don't need any help, but who is it that might be sitting next to you here?

MR. SCOTTI: Elizabeth Geddes.

THE COURT: She looks familiar to me.

MS. GEDDES: Hi, judge.

THE COURT: Nice to see you, Ms. Geddes. Nice to see you on board.

Is your partner Mr. Scotti ready to do well for the government?

MS. GEDDES: Yes, judge. We are ready to proceed.

THE COURT: The other folks that are here?

MR. SCOTTI: Special Agent Shannon McFadden and Ranit Patel.

THE COURT: You all introduced yourselves to the jurors, I guess, just a short time ago. Would you like to say hello to them again?

MR. SCOTTI: Your Honor, the only reason why I would ask to do that again was Ms. Geddes was not able to be here in the morning so Mr. Shreve Ariail was with me during jury selection, and also Magdalena St. Surin is here from our office, who wasn't here in the morning.

THE COURT: So let me do that; and, Ms. David, do you want to say hello again?

MS. DAVID: I guess I can, your Honor.

THE COURT: You are with the same group that was here during the jury selection?

MS. DAVID: Yes, same group.

THE COURT: So let me talk to them for about 15 or 20 minutes and give them some of the ABCs about how we are going to proceed, and we will send them home and have them come back here at 10:00 tomorrow.

Is there anything anybody would like to say now before we bring in the jurors?

MR. SCOTTI: Not from the government, your Honor.

MS. DAVID: Not from the defense, your Honor.

THE COURT: So let's bring the jurors in.

Off the record.

(Discussion.)

THE CLERK: All rise.

(Jury enters.)

THE CLERK: You all may be seated.

THE COURT: Good afternoon, folks. It's been a long day for you. I don't want to let you go home until you have an opportunity to meet the judge who is going to try the case.

Magistrate Judge Gold, outstanding judge, has helped me by selecting the jury. We do that many times. You had the opportunity to witness a very fine judge, who was kind enough to help me get started with this trial.

Now that the jury has been selected, it's time for me to take over and manage the trial.

Now, Michael, will you give the oath of office now I suspect?

THE CLERK: If you would like to, yes, we can do it now.

THE COURT: I think we should.

THE CLERK: Okay.

THE COURT: I'm going to speak to you for about 10 or 15 minutes to try to get you comfortable and ease you into what's going to be happening in the next couple of days in your lives here and then send you home and you will come back tomorrow at ten o'clock, and at that time we will start what you might say is the more formal part of the case, where the lawyers are going to start speaking to you. But first I want to just chat with you about some of ABCs you might be curious about, what I expect of you, how we run the courtroom, and basic fundamental things like that.

Before I do, let me just get a sense who have you are in terms of -- you probably went through this before today -- how many of you folks have sat on a jury trial before, just a show of hands. So not even half, and I don't know whether it was a criminal case or civil. Criminal let's see, show of hands? Two. And the others were on civil cases.

So I'm going to speak to you as if none of you have had the privilege of being jurors before; and those who have, have had that privilege, will probably hear things you may have hardy before in your prior experiences. But I would like to start off by giving you some sort of historical overview, which, I think, is very important to me.

We have juries in our country, both civil and criminal. It's not that way in every other country in the world. In fact, very few countries still have lay people, citizens, passing judgment on their fellow citizens in criminal cases; and no country does it in civil cases anymore, not even the U.K., where we get many of our common law traditions from. They abandoned juries in civil cases, not in criminal, some years ago, except for defamation cases. If you say something bad about the queen you can go and have a jury trial.

So the reason why I emphasize that is because I think we are really unique, even in the criminal world. We have -- most countries don't even have juries. We have judges. Good example recently is in the Oscar Pistorius case in South Africa. You may recall that there was one judge who sat and passed judgment on his guilt or innocence, right?

So we pride ourselves in the jury system, and we consider it to be a very fundamental privilege for people to be selected to serve as jurors. You have to be a citizen. It's in the constitution. The founding fathers, back in 1789, when the constitution was, you know, created -- I say founding fathers advisedly; I have a feeling while there were no formal founding mothers I'm sure they put their two cents in back home -- but in those days just founding fathers thought it was so important that we have a jury system in all cases that they put it in the constitution, and they said it was a privilege to serve. You have to really be qualified to be a citizen.

And why did they do that? Because they all came from a very bad place. The people who founded our country were escaping religious persecution, horrible things in the U.K., in England, at that time; and they just did not want a system where the king or the king's servants or vassals would decide who was going to live or die. So they really felt very strongly about that. So it's a privilege to serve, and that's the way it was in 1789; and that's the way I view it to this day.

Now, I know that you have to give up some of your personal, you know, lives to be here during the day. This is not going to be a lengthy trial. All cases are equally important, but some, by their very nature, take longer than others. And the ones that take very take long are the extreme cases you might read about -- like the O.J. Simpson case, right -- but those are the exceptions not the rules. Most trials last a week or two. Sometimes you get a two- or three-month trial.

You are selected to preside and adjudicate the guilt or innocence of a person in a criminal case. You know this is a case involving drug importation. I'm not going to tell you much about it. You know the general nature of the case from jury selection. Of course, the lawyers are going to be presenting the case to you, and we are all going to listen carefully to what the lawyers do.

The other observation, which I think is something I like to share with jurors, is I was here on 9/11. We kept the office open, even though there was no business, because we wanted to show that we won't let anybody interfere with the operation of the court; and so we -- but there wasn't much to do here. I mean it was traumatic. We saw the buildings come down from our office.

Before then, when we went to jury selection, there was an occasional situation, not too many, when you found a wise guy or a wise gal who was going to pride themselves on making silly excuses to avoid jury duty. People talked generally outside of the court, I'm going to be called for jury duty, how do I get out of it. It's human nature. They say that. It's almost a knee-jerk reaction, but we can tell those people right away. But after 9/11, rarely, rarely, do I see that anymore. It's almost as if there has been a whole change in the public's consciousness about the privilege we have to be able to sit in judgment, to be called upon to serve our country. We can't go and pick up a gun, most of us, and go fight for the country, but we can at least be here and serve our country as jurors. It's a small sacrifice to pay for a very large, large purpose.

I always ask jurors whether or not whether or not I should go to Washington afterwards and lobby Congress to abandon the jury system and, you know, nobody says that should happen. You will see very clearly that after you go through the whole process you realize how much, how important it is, and how, you know, relevant it is to the way we run our judicial system that you are going to really have a lot of respect for the jury system because here we call upon citizens to pass judgment on other citizens, and it's a special calling.

Now, having given you that little patriotic speech, let me tell you that you are going to be here a couple of days. It's not going to be like O.J. Simpson. It's not going to be a lengthy trial, and we, you know, run the courtroom in a basic, simple way. We start at 10 o'clock and we try to go through for a whole day, through 5:00. Sometimes a little before 5:00, maybe sometimes maybe a little after. It depends on what's happening in court. If a witness has just finished his or her testimony and it's a quarter to 5:00, obviously it's silly to call somebody for 10 or 15 minutes; and, conversely, if we feel that we can complete somebody's testimony a few minutes after

5:00 rather than to have that person come back again for a few minutes again the next day. I call those shots.

So what are our respective roles? You have a sense of what my role is now. I talk to you, I have the run of the show so to speak, and I make sure that everything happens according to good order; and I'm in charge of what I like to say is the law department. So I have to really deal with the legal issues that we have in the case. What might they be? Well, I've got to explain the law to you and I have to get you started. I have to talk to you preliminarily and get you oriented; and, at the end of the case, when all the evidence has been presented to you, I will come down and I will explain the law to you. So that's an example of what my responsibility is.

There may be situations when you are going to hear a lawyer object, say objection. You probably will hear that word. If that happens, that means I have been asked to make a ruling as to whether or not a question posed to a witness was a proper question or not. If I say objection overruled, that means I thought it's a good question, and the witness can answer the question. If I say objection sustained, that means I don't think it's a proper question to ask the witness according to the rules of evidence, which I'm supposed to know something about. Right? And then the witness will not be able to answer the question.

So you may see that type of thing happening. That's an example or a couple of examples of what we call my responsibility to deal with the law.

What's your responsibility? You are in charge of what I call the fact department. You are going to listen to the evidence and you are going to listen to my explanation on the law, and at the end of all the evidence you will go into the jury room, and you and only you will decide the facts. I will not be there with you. I have nothing do with that.

So we keep our roles and responsibilities clean. You are in charge of the facts. I'm in charge of the law. We obviously need each other collectively. We are a team. One without the other, we can't have a trial.

The way it unravels is that after I finish speaking and tomorrow morning, the government has the burden of proof. In criminal cases it's a high burden of proof, beyond a reasonable doubt. I will explain that more to you at the end of the trial, but because the government has the burden of proof the government goes first. The government has to prove its case.

You probably have been told already that the defendant doesn't have to do anything. The defendant has the presumption of innocence. The defendant is presumed innocent. The fact that the defendant is in court and has to be here while the government is trying to establish the defendant's guilt doesn't mean you can infer anything at all, any wrongdoing at all, by reason of the fact that the defendant has been indicted and has been brought to court and is sitting here in court today. All right. And to do so would be violating the constitution.

The defendant doesn't even have to testify. If the defendant chooses not to testify, that means the defendant is exercising her constitutional right not to testify. You can't hold that against her. It would be a violation of your oath of office, which you are about to get very shortly, because the constitution says that the government has the total burden of proving the defendant's guilt and the defendant doesn't have to do a blessed thing, can just stand at the end of the trial and say I don't think the government has met its high burden of proof. It doesn't have to do anything; and, if that's the case, if you agree with that, you have to say not guilty. All right.

So the whole idea of trial is to see whether the government can meet its high burden of proof and by presenting evidence to you. Evidence is going to come from witnesses who will be testifying under oath and documents which may be offered into evidence, and that's what the evidence will be.

The government will, tomorrow morning at ten o'clock, lay out what the government hopes to establish during the course of the trial. We call that an opening statement. So the purpose of an opening statement, just to give you some orientation, is what the government hopes to prove. Whether the government will do that or not is your decision to make. You will determine that.

What the government says, what the lawyers say in opening arguments is not evidence. They have not been witnesses to any of facts in this case. They are arguing on behalf of their respective clients, and they are ethically bound to do it zealously. They are not, you know, they are not neutrals. They are supposed to effectively do the best they can to present their case for their respective clients. That's their obligation; and I expect them to do it zealously.

I'm here to make sure everybody gets a fair trial. I'm the neutral. You are the neutral in this case as well.

After the government presents its case, then the defendant has the right to speak to you. Doesn't have to, but has the right to speak.

And then you will have -- the trial will start after that by the government calling its first witness. When the government questions a witness, we call that direct examination. After the witness has been questioned, then defense counsel has the right to question that witness. We call that cross-examination. The government can then ask them further questions about things that were brought up during cross-examination. We call that redirect examination. There could be recross. We get to the point where the witness' testimony is exhausted, and then we go on to the next witness;

and that's basically the way the case runs.

When the government finishes producing all the of evidence which it wants you to be exposed to, the witnesses, documents, then the defendant has the opportunity to speak. The defendant doesn't have to do anything. As I just told you, they can present a case. They have the choice to do so. And then I come down, explain the law to you; and then you enter your deliberations, and you will make your verdict and determination. So that's roughly the way the process runs.

We start at ten o'clock. I find that to be the best starting time because, especially in New York, you know, sometimes, you know, between 8:00 and 9:30 the travel time is just terrible. Where do you folks come from, Kings County? Let's see a show of hands. Brooklyn? Queens? Staten Island? Anybody from Nassau County? Anybody from Suffolk County? Okay. We have a Suffolk County person.

Where in Suffolk County are you from?

JUROR: Holtsville.

THE COURT: So if you drive, chances are that there will come a time when you are not going to be here at 10 o'clock, because that's just the way the world works. So you are best off if you can just take public transportation and you won't be in trouble.

We try to start promptly at 10 o'clock because if anybody is late, including the judge, that means we are imposing upon 10, 15, 20 people; and you don't want to do that, you know. So really try hard to be here by ten o'clock, and we start promptly at 10:00. If there is an emergency, anything crops up, you can contact Mr. Innelli. You will know how to call him. Try to get a good night's sleep tomorrow (sic) night before we start, and we will be doing just fine.

So the last jury I had was a two-month trial, and they were here at ten o'clock. Not one day was one person late. I was really impressed with that. So see if you can do the same thing, for obvious reasons.

If you have an emergency, you call Mr. Innelli. If you oversleep, call up right away. So make sure you get a good night's sleep. You will be free to go back.

When you go home people are going to ask you questions about what kind of case it is, and you are not to talk to them. You are going to try to just say, please, do not ask me any questions. Because the only thing that counts is what happens in the courtroom. Don't put any thoughts into my head. Don't give me an opinion.

Don't use the Internet. Don't read anything in the newspaper. I don't think anything will be in the newspaper, but sometimes people are curious. They look at the Internet. You have got to come here totally open, without having any thoughts in your mind about anything. You know nothing about the case now.

You are going to have to get a good night's sleep tonight, Juror number 1, please, yes? Promise?

JUROR: Yes.

THE COURT: Okay. And I will try not to yawn also, but I can't guarantee anything.

But I'm a martinet when it comes to that. So it's important that everybody pay attention. All right. So basically I think that when you go home, don't talk about the case at all to anybody; and we will see you at ten o'clock tomorrow.

We will talk more a little bit about things. You can take notes, if you want. You don't have to. We have a wonderful court reporter, who is taking down everything we say; and if at the end of the day you want to hear the testimony back, we can have it sent back to you or read back to you. So if you don't remember anything, you don't have to worry. If you want to take notes, you can do so, but just privately for your own purposes. Just to keep you perhaps oriented you can do that. But this is not a trial by note taking. It's not who takes the best notes. You keep them for yourselves. We really have a record here. So you will have disposal to that.

I think that's basically all I want to say to you. You may pass some of these folks in the hallway as you go about your business. The lawyers are professional people. They are not going to talk to you. They are not being rude. It's just that it's best that nothing be spoken about, even if it has nothing to do with the case. Because somebody 50 feet away doesn't know that. So we try to avoid even the appearance of impropriety. They are professionals.

You can understand that if anything happens untoward, if you hear anything outside the courtroom, sometimes you are at lunch, you may here somebody talk about the case, tell Mr. Innelli. Don't talk about it amongst yourselves. We have alternates here. So if we have to excuse somebody, we can do that. And I think that's about it.

So let's end the day by giving you the oath. Now, you got an oath this morning when you were selected as jurors. That governed the questioning. The voir dire process, we call it. And now that you have been selected as jurors you get a special oath, and it's very quick. We start the trial with the oath, and we end it. Listen to how quickly it comes and goes and listen to how powerful and important it is.

And, Mr. Innelli, will you do the honors at this time.

THE CLERK: Yes. Good afternoon, everybody. I would ask you all please to stand and raise your right hands.

(The jury was sworn in.)

THE CLERK: Thank you.

THE COURT: That took two seconds. Anybody repeat it? Without fear, without favor, based solely on the evidence in the case, nothing else. That's what you have just sworn to uphold. All right.

See you tomorrow at ten o'clock, and be here promptly; and we will start with the opening statements by the government lawyer. Okay.

THE CLERK: All rise.

(Jury exits.)

THE COURT: All right. I guess we are ready to start the trial tomorrow at ten o'clock. See you at that time.

MR. SCOTTI: Thank you, your Honor.

MS. DAVID: Thank you.

(Trial adjourned to Tuesday, June 16, 2015, at 10:00 a.m.)

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Certified to be a true and accurate transcript.
/s/ Michele Nardone
MICHELE NARDONE, CSR, RPR, CRR -- Official Court Reporter